IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 188 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARISH PREMANI - Petitioner(s)
Versus
NATURAL ORGANOCHEM LIMITED - Respondent(s)

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Appearance :
MR AS VAKIL for Petitioner(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/10/2007

ORAL JUDGMENT

1. The present petition is preferred for seeking winding up of the Company i.e. Natural Organochem Limited.

2. Heard Mr.Vaikil, learned Counsel appearing for the petitioner at length.

3. Upon hearing the learned Counsel for the petitioner, it appears that two grounds are mainly sought to be canvassed; one is that the Company has not commenced the business and the second is that it is just and equitable to wind up the Company.

4. It is hardly required to be stated that winding up of any company is a last resort and such would be only if the Court comes to the inevitable conclusion that it is not possible for the company to continue its business or activity or that the functioning of the company would be against the interest of all concerned namely; shareholders, creditors and other persons directly or indirectly concerned with the functioning of the company.

5. It appears that from the record produced by the petitioner that in the Director's Report dated 29.2.2004, copy whereof is on page 125 that as per the said report there are possibilities to start plant operations when the Directors bring

Rs.30 lac as unsecured loans and to start commercial production after Directors raise unsecured loans of Rs.180 lac. However, in the said report, it is also stated that IDBI Officials, after visit, have communicated that there shall be further disbursement of Rs.30 lac only when the company creates security on the immovable property in favour of the IDBI and the Directors bring unsecured loans of Rs.115 lac. Further, in the director's report dated 1.9.2007, copy whereof is produced on page 137, it has been, inter alia, stated that the company has received fax letter from IDBI stating that “complete the project immediately and the assets may be put to use to generate revenue without any further delay”. The notice issued by the Company dated 29.8.2005 shows the proposed resolution for issuance of Rs.15 lac equity shares at Rs.10/- each at par for cash to Shri Nilesh Gupta and issuance of Rs.10 lac equity shares to M/s.Septu (I) Pvt. Ltd. against the loan facility given to the company. It is also mentioned in the said notice of proposed

resolution for allotment of shares to IDBI at par against the convertible debenture of the company held by them. On page 149 in the director's report, there is a reference to repayment schedule in respect to the term loans of Rs.400 lac and further it is also mentioned that the company may arrange to execute an agreement for issuance of the equity shares of Rs.118 lac to IDBI in demat form within a period of 60 days from the letter. The aforesaid is the part of director's report dated 29.8.2005. In the next director's report dated 4.12.2006, copy whereof is produced on page 156, shows for allotment of the shares of Rs.118 lac to IDBI and the shares of Rs.100 lac at the face value to M/s.Septu (I) Pvt. Ltd. The copy of the letter dated 14.3.2007 is produced on page 160 by the petitioner, addressed to IDBI shows that the company is negotiating with the IDBI for permitting disposal of the property to a party at Italy so as to create fund of about Rs.695 lac, out of which, the payment is to be made to IDBI of Rs.450 lac and the balance is to be

utilized amongst the shareholders and for paying the market liabilities.

6. The aforesaid shows that the company is making sincere efforts to materialize the transaction for disposal of the property and to pay up the outstanding dues to IDBI and market current liabilities and thereafter to the shareholders. If such an approach is undertaken by the company and at that stage, if the proceedings of winding up of the company are initiated and the order is passed of winding up of the company, it would go against the interest of all creditors of the company and also consequently the shareholders.

7. As per the additional affidavit filed today, the petitioner is holding 0.76% of the shares out of the total paid-up share capital of the company and this Court, if keeps in view the interest of the majority of the shareholders or the shareholders at large, the efforts by the Company by realisation of the money and thereby to discharge the liability to the creditors and market liability and thereafter to pay the shareholders, cannot be said as, per se, against

the interest of shareholders or the creditors.

8. Therefore, in the opinion of the Court, considering the record produced, it would not be just and equitable to initiate proceedings for winding up of the Company at this stage.

9. The attempt on the part of the learned Counsel to contend that the company has not commenced the business since last eight to nine years and, therefore, this Court may exercise the power for winding up of the company cannot be countenanced for the reasons that it is not a ***sine quo non*** that in every case when the company has not commenced its business, the Court would exercise the power for winding up. In a given case, if this Court is of the opinion that the company is making sincere efforts to come out of its financial difficulties, even if it has not commenced its business, the Court may decline to exercise the discretion for winding up of the company.

10. Further, the balance sheet, copy whereof is produced on page 174, shows that the company has issued a paid-up share capital of

Rs.3,35,50,000/- and it has the fixed assets of Rs.9,21,93,507/- as on 30.6.2006, the balance of the assets was of Rs.1,02,274/- and it is only a minus balance of Rs.43,007/- as on 31.3.2007. Therefore, the operations of the company are going on. If the company has not started its commercial production, but has started actions for achieving the objects, it can be said that the Company has commenced its business. The words 'commencement of the business' cannot be equated to mean the commencement of manufacturing activity or starting of the production by the company. If any reasonable steps are taken to achieve the object, it cannot be concluded that the company has not at all commenced its business. Therefore, even otherwise also, the ground as sought to be canvassed is contrary to the record produced by the petitioner himself.

11. Mr.Vakil, learned Counsel for the petitioner further attempted to submit that the substratum of the company is lost since the object of the company is to undertake manufacturing activity

of various items as mentioned.

12. In my view the statutory ground of non-commencement of the business is sought to be canvassed in the petition and the same is considered accordingly as observed earlier. Further, the substratum can be said as lost only if the Court is of the opinion that there are no chances whatsoever with the company to achieve its object. At this stage when the company is making attempt to come out from the financial difficulties and also making sincere attempts to pay all the dues of the creditors, it would be premature to conclude that the substratum of the company is lost.

13. Hence, the said contention cannot be accepted.

14. In view of the above, the decision upon which the reliance is placed by Mr.Vakil in facts of the present case, cannot be made applicable.

15. In the result, the petition is dismissed.

11.10.2007 **(Jayant Patel, J.)**

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